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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह प्रलग संकलन के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed  
as a separate compilation

MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 21st December 1974

S.O. 729(E).—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Arbitrator in the industrial dispute between the management of Associated Cement Companies Limited, Jamul Cement Works District Durg, Madhya Pradesh and their workmen represented by Samyukta Khadan Mazdoor Sangh, Jamul Quarry Branch, Nandini Road, Bhilai, which was received by the Central Government on the 2nd August, 1974.

REFERENCE No. I/ID/1973

BETWEEN

Mr. J. H. Utamsingh, Agent, Jamul Cement Works Limestone Quarries, P.O. Jamul, Cement Works, District Durg.—First Party.

AND

Mr. Sambal Chakraborty, President, Samyukta Khadan Mazdoor Sangh, Jamul Quarry Branch, Nandini Road, Bhilai-1.—Second Party.

In the matter of reference made u/s. 10A of the I.D. Act, 1947, by the Central Government re: dismissal from the services of 1. Priya Swamy, and others.

Present

Shri A. W. Kanmadikar, Member-Judge.

*Appearances*

Shri L. P. Bhargava, Advocate, for the first party.

Shri M. R. Deo, Advocate, for the second party.

## AWARD

This is a reference made by the Central Government under Section 10A read with Section 10A(3) of the Industrial Disputes Act, 1947, to my arbitration. The dispute is between the Associated Cement Companies Limited, Jamul Cement Works Limestone Quarries, Jamul (M.P.) (hereafter referred to as 'the Company') and its workmen as represented by Samyukta Khadan Mazdoor Sangh, Jamul Quarry Branch, Nandini Road, Bhilal (hereafter referred to as 'the Union'). The term of reference is as under:—

"Whether the dismissal from the services of S/Shri (i) C. Periya Swamy, H.E.O.,

(ii) Surjit Singh, H.E.O., (iii) Chunbaddi, Driller, (iv) M. V. Rao, Electrician, & (v) S. K. Dutta, Clerk, from the Company's service is legal and justified. If not, to what relief, the concerned workmen are entitled?"

2. I shall first take up the case of M/s. Chunbaddi, Priya Swamy and Surjit Singh. The Company contends that these three workers were employed at the Company's Lime Stone Quarries. That on 27th March, 1973 they informed the supervisory staff which was allotting work, that they were on strike. They further incited and instigated other workmen to continue and remain on strike. The said strike was declared to be illegal, and in spite of its knowledge these workmen continued to remain on strike. These workmen were issued a charge-sheet under the Certified Standing Orders of the Company and after an enquiry held under the Standing Orders they were dismissed from service. The defence of these workmen is that the Company was displeased with them because of their lawful trade union activities, and as they were office-bearers and members of the trade union. Regarding the enquiry the Union contends that it was illegal, improper and against the principles of natural justice. The Company has filed the enquiry papers, which are proved by Mr. K. Dorairajan, who conducted the enquiry. Exs. P/1, P/2, and P/3 are the charge-sheets given to Shri Chunbaddi, Priya Swamy and Surjit Singh respectively. A Hindi translation was also given at the back of these charge-sheets. The workmen submitted their replies at Exs. P/4, P/5 and P/6. The replies of these workmen are identical. It is of denial, plus victimisation. In the enquiry the statements of Nagendra Singh, Foreman, Mr. S. C. Shah, Asstt. Quarry Manager were recorded on behalf of the Company. They were cross-examined by the workmen. In defence the workmen examined Brij Mohan, Mangal and Jaggoram besides giving their own statements. From the statements of the Company's witnesses it was apparent that on 27th March, 1973 when Mr. Tiwari allotted work, these workmen stated that they were on stay-in-strike and did not work. It was also in evidence of Mr. Shah that the dispute pertaining to the two workmen Devendra Kumar and Ramanand was pending for arbitration before Shri N. A. Mody. Another dispute regarding night shift allowance and bonus was also pending before the Industrial Tribunal. On 26th and 27th March, 1973 notices were put up informing all the workers that the stay-in-strike was illegal under Sections 23 and 24 of the I.D. Act as some cases were pending before the Industrial Tribunal and the Arbitrator Shri N. A. Mody. These notices are at Exs. P/12 and P/13, and were a part of enquiry. From the questions put in cross-examination of Mr. Nagendra Singh by Priya Swamy, it is clear that the workers had knowledge of these notices. In their statement Surjit Singh and Priya Swamy admitted that they were allotted their work yet they could not do the work as the vehicles on which they were allotted the work had no oil and petrol and this matter was reported to Nagendra Singh, who said he will go to the Manager and enquire. According to these witnesses Nagendra Singh did not return and therefore they remained idle. This defence looks to be absurd. The fact that there was no strike is not denied by these workers. This defence was not raised in their replies. No question was put to Nagendra Singh about it. Chunbaddi said that he was allotted the work of going to Quarry No. 3, that when he was proceeding to it there was 'Hulla' on account of which he could not proceed. He says he reported the matter to Mr. Singh, who told him to sit outside and seek instructions from the Manager. This defence also was not raised in replies to the charge-sheet. No question was put to Mr. Nagendra Singh. The defence looks unreliable. Thus the defence story being unworthy the Enquiry Officer was right in not relying it in his findings.

3. Thus the charge of striking work was proved. It is also in evidence that these workers took leading part in the strike. The strike was illegal under Sections 23 and 24 of the I.D. Act and this fact was brought to the notice of the workers by Exs. P/12 and P/13. The workmen were held guilty of Certified Standing Order No. 19(xx), which is as under:—

"Striking illegally either singly or with other workers or abetting, inciting, instigating or acting in furtherance of an illegal strike."

Thus the charge of striking and acting in furtherance of strike was proved. Once the misconduct is proved, the question of victimisation has no significance. 195-II L.L.J. 439 Laxmi Devi Sugar Mills, Ltd. Vs. Nand Kishore Singh, 1961-I.L.J. 511 Titaghar Paper Mills Co. Vs. Ra-m Naresh Kumar, 1957-II L.L.J. 395 Upper Ganges Valley Electricity Supply Co., 1957-I L.L.J. 17 Lakshmi Devi Sugar Mills Ltd. Vs. Ram Sarup and others, 1963-I L.L.J. 291 Bengal Bhatdee Coal Co. Vs. Ram Prabesh Singh, 1969-II L.L.J. 799 Tata Engineering and Locomotive Co. Vs. Prasad, and 1961-II L.L.J. 417 Brooke Bond India, Ltd. Vs. Subba Raman. Besides, no question was put to any witnesses regarding victimisation and it was also not proved in the enquiry.

4. In their statements before the Court, they said that S/Shri Shah, Mathur and Anand had told them to leave the work of Mazdoor Sangh. S/Shri Shah, Anand and Mathur have denied any such allegation. Priya Swamy stated that S/Shri Mathur and Shah told him to leave the work of Red Union. This is also denied by Mr. Mathur and Mr. Shah. Chubbaddi says Mr. Singh and Mr. Shah, had asked him to leave the Red Union. This again is denied by Mr. Singh and Mr. Shah. At no point till their statements in Court these allegations were made, on the face of it the allegations appear to be no better than an eye wash and after thought. Thus there is absolutely no evidence of unfair labour practice.

5. For all these reasons, I hold that the dismissal of Chubbaddi, Priya Swamy and Surjit Singh was fair, legal and proper and they are not entitled to any relief.

6 Re: Shri S. K. Dutta and Shri H. V. Rao.—The charges against Shri S. K. Dutta and Shri H. V. Rao as contained in Ex.P/26 are as under:—

- "1. That you two along with others have resorted to lightning strike (stay-in-strike), without giving 14 days notice, from 27th April, 1973, and which is continuing,
2. The said strike is illegal under Secs. 23 and 24 of the I.D. Act, due to pendency of adjudication proceedings pending in Ref. No. CGIT/k(R)/(45)/72 before Central Government Industrial Tribunal, Jabalpur and also arbitration proceedings pending before Justice N. A. Mody, Arbitrator appointed under Sec. 10A, of Industrial Disputes Act, 1947.
3. That on 30th April 1973, at about 2.30 p.m. you two lead a mob of about 40/50 persons and you two entered the Quarry stores where some of the Supervisory staff named M/s. R. D. Murthy, Asst. Store Keeper, A. P. Singh, Mines Foreman, S. K. Das, Mines Foreman and V. S. Purohit, Asst. Quarry Manager, were sitting. No sooner you entered the stores, you shouted at the said Supervisory staff and stating that you had come to see what was going on in the Stores, and what are the things which have been kept in the Stores. Both of you then moved around the Stores and while leaving you threatened the said Supervisory Staff that they will meet with serious consequences because they have not joined the strike.
4. Thereafter you lead the crowd to Vocational Training Room (V.T. room), where Mr. T. N. Tiwari, Fitter along with Mr. Kumtakar, Chargehand, were sitting. You both went inside the said room and dragged out Mr. Tiwari and started abusing him in filthy language and threatened him that since he has not joined the strike, the consequences for him will not be good. You two further threatened that you will deal with him and also with his family members for not having joined the strike.

The above acts on your part constitute to misconduct under the clauses 19(XX), 19(XXI), 19(II), 19(XXI), 19(IV) and 19(XLII), which read as under...."

A joint enquiry was held against these two persons. The charge-sheet was tried to be served on these two workmen by personal delivery, by pasting it on the notice board, as per the provisions of Certified Standing Orders, it was also sent by Registered A.D., but was returned as refused to accept. The Enquiry Officer, therefore, had no other alternative but to proceed *ex parte*. I am not prepared to believe the statement of these workmen that they had not received the charge-sheets. Shri A. P. Singh, Foreman, was examined in the inquiry about the steps he had taken to serve the charge-sheet. He also given a statement in the Court. Thus the *ex parte* enquiry held is perfectly justified. In the enquiry statements of S/Shri A. P. Singh, R. C. Singh, S. K. Das, V. S. Purohit, T. N. Tiwari and P. M. Kumtakar were recorded. From the evidence of these witnesses it was clear that there was a stay in strike on 27th April, 1973 without giving 14 days notice, as required by law (Secs. 23 and 24 of the I.D. Act, 1947); that on 30th April, 1973 these two workmen led a mob of 40 or 50 persons, and entered the quarry, threatened the Supervisory Staff with dire consequences if they did not join the strike. They dragged Mr. Tiwari, who was doing his duty in Vocational Training Room. They held

out threats to Mr. Tiwari. It is also in the enquiry that some disputes were pending in the Industrial Tribunal and before Mr. N. A. Mody, Arbitrator, and that was additional reason to hold the strike as illegal.

7. Thus all the allegations and charges were proved. As pointed out before, if the misconduct was proved the question of victimisation does not arise. In his statement in the court Shri W. V. Rao stated that he used to champion the cause of workers that Mr. Mathur told him to leave the Union otherwise he would not be promoted. Mr. Mathur has denied these allegations. He admits that once before also he was charge-sheeted but was only punished by suspension for two days. He got an increment of 18 n.p. per day when Mr. Mathur was Manager. The talks are said to have taken place in May and September, 1972 and April, 1973. All these allegations are nothing but a while lie. In the written statement no reference was made to it. The allegations on the face of it appears to be an eye wash. Shri Dutta says that Mr. Mathur had told him that he will not get the night post for which he received an interview call, because of his trade union activities. Mr. Mathur has denied it. He himself has admitted that he has not done any work worth mention of the union. The talk is alleged to have taken place in January, 1973. There is no reference about it in the written statement. Mr. Mathur has stated that he had in fact recommended the application of Mr. Dutta for promotion but some one was selected. Mr. Dutta does not tell us who else was promoted. Thus the allegations are just a subterfuge to avoid the consequences of the misconduct. I, therefore, hold that the domestic enquiry against Mr. S. K. Dutta and Mr. M. V. Rao was legal, fair and proper. The charges were grave enough to warrant dismissal.

8. I, therefore, hold that the dismissal from the services of M/s. (i) C. Priya Swamy H.E.C., (ii) Surjit Singh, H.E.C., (iii) Chubaddi, Driller, (iv) M. V. Rao, Electrician, and (v) S. K. Dutta, Clerk, from the Company's services is legal and justified and they are not entitled to any relief.

9. The reference is answered accordingly.

A. W. KANNADIKAR,  
Member-Judge.

Indore, dated the 25th of July, 1974.

[No. L-29013/3/73-LR.IV.]

D. BANDYOPADHYAY, Jt. Secy.